SCCJA

LEGAL LOG

VOL. 1 No. 6 OCTOBER 1983

Texas v. Brown

The United States Supreme Court recently clarified the "plain view" doctrine last mentioned in Coolidge v. New Hampshire, 403 U.S. 443 (1971). According to Coolidge, the "plain view" doctrine permits the warrantless seizure by police of private possessions where three requirements are satisfied.

> First, the police officer must lawfully make an "initial intrusion" or otherwise properly be in a position from which he can view a particular area. Second, the officer must discover incriminating evidence "inadvertently", which is to say, he may not "know in advance the location of [certain] evidence and intend to seize it," relying on the plain view doctrine only as a pretext....Finally, it must be "immediately apparent" to the police that the items they observe may be evidence of a crime, contraband, or otherwise subject to seizure. Texas v. Brown, 33 CrL 3001, (1983).

Texas v. Brown, supra, clarified the third element of the doctrine, holding that "immediately apparent" did not mean that an officer must be certain concerning the seizable nature of the items but "that there is probable cause to associate the property with criminal identity." Quoting Payton v. New York, 445 U.S. 573, 587 (1980).

In an effort to better disseminate information on legal matters that affect law enforcement officers, we are pleased to present to you the LEGAL LOG.

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Henry Ray Wengrow
Legal Counsel

Brown deals with the seizure by an officer of a tied-off opaque balloon that he suspected contained illegal drugs. The facts are as follows: A Fort Worth police officer set up a routine driver's license check. Brown was stopped and asked for his driver's license. At approximately the same time, the officer observed Brown take his hand from his right pants pocket. Caught between the two middle fingers of Brown's hand was an opaque, green party balloon, knotted about one half inch from the tip. Brown let the balloon fall to the seat beside his leg. He then reached over and opened the glove compartment.

The officer was aware, based on prior experiences in drug arrests, that narcotics

were frequently packaged in similar balloons, and he shifted his position to see into the glove compartment better. He observed several small plastic vials, some loose white powder and an open bag of party balloons.

Brown rummaged through the glove compartment, but told the officer he did not have a driver's license in his possession. The officer then asked Brown to stand at the rear of the car. As Brown complied, the officer reached into the car and picked up the balloon. He observed a powdery substance within the tied-off portion of the balloon.

The officer placed Brown under arrest and conducted an inventory of the car. They then found several plastic bags containing a green leafy substance and a large bottle of milk sugar. The substance in the balloon was later analyzed and found to contain heroin.

On appeal the Texas Court of Criminal Appeals overturned the conviction on the ground that it must be immediately apparent that the balloon contained incriminatory evidence before it can be seized. The United State Supreme Court reversed and remanded.

The search and seizure was without a warrant. The question then is what, if any, exception to the warrant requirement applies to this case. The obvious exception is the "plain view" doctrine. The court points out that the "plain view" doctrine only comes into effect when the officer has some prior justification to have access to the object. There is no dispute that the officer's stop of Brown's automobile was valid. In addition, the use of a flashlight was not unconstitutional under United States v. Lee, 274 U.S. 559, 563 (1927). The public could have seen what was in the car, so that there was no legitimate expectation of privacy involved. There was, then, no search within the meaning of the Fourth Amendment as to the observation of the interior of the car and the glove compartment.

Having decided that the officer was in a lawful position to view the interior of the car and the glove compartment, the court then addresses the issue of inadvertence and decides that the roadblock was not a pretext to discover evidence of a narcotics violation. After considerable discussion, the court rejects the Texas Court's view of the third element, that the officer must know that the items seized are contraband or stolen property. Rather the court adopted the language of Payton v. New York, 445 U.S. 573 (1980) which states:

> "the seizure of property in plain view involves no invasion of privacy and is presumably reasonable, assuming that there is probable cause to associate the property with criminal activity." Payton at 587 (emphasis added by the court) Id at 3004.

The standard, then, is probable cause to believe the object is contraband or evidence. The court again pointed out that probable cause means that "the facts available to the officer would 'warrant a man of reasonable caution in the belief' Carroll v. United States, 267 U.S. 132, 162 (1925), that certain items may be contraband or stolen property or useful as evidence of a crime." Id at 3004.

This case now gives the law enforcement officer a clear standard as to when he can seize an object under the "plain view" doctrine. If the officer is in a lawful place to view the object, if he is not there under a pretext, and he has probable cause to believe that the object is contraband, stolen property or evidence of a crime, it can be seized.

LEGAL LOG is published monthly by the South Carolina Criminal Justice Academy of which John A. O'Leary is executive director. The academy's legal affairs and legal instruction are handled by James M. Kirby, senior staff counsel, Henry R. Wengrow, general counsel and Joseph H. Lumpkin, Jr., staff counsel.